



PATENT  
ATTORNEY DOCKET NO.: 044574-5040-US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Patrick C. KUNG et al.

Application No.: 09/830,033

Group Art Unit: 1631

Filed: October 22, 2001

Examiner: Cheyne D. Ly

For: PHYTOMICS: A GENOMIC-BASED APPROACH TO HERBAL COMPOSITIONS

MAIL STOP RCE  
U.S. Patent and Trademark Office

Sir:

**INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(b)**

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(b), Applicant brings to the attention of the Examiner the documents listed on the attached PTO-1449. This Information Disclosure Statement is being filed before the mailing date of a first Office Action after the filing of an RCE on the merits for the above-referenced application.

A copy of the listed document is attached. Applicant respectfully requests that the Examiner consider the listed document and evidence that consideration by making appropriate notations on the attached form.

The attached U.S. Patent No. 6,156,291 ("the '291 patent") recently came to the attention of Applicants. Applicants do not believe that the '291 patent is anticipatory as regards the currently pending claims of the instant application, nor do they believe it renders the currently pending claims otherwise unpatentable. As the disclosure of this patent is similar to the disclosure of the Khwaja *et al.* reference cited by the Examiner in the Final Office Action, Applicants' reasons regarding the inapplicability of the '291 patent to the currently pending claims are basically the same as those stated in the Preliminary Amendment and Dr. Theodorescu's Declaration filed currently herewith.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If it should be determined that any of the listed documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such document.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

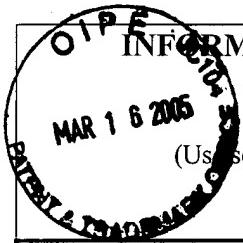
**Except** for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. §§ 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

**MORGAN, LEWIS & BOCKIUS LLP**

  
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Dated: March 16, 2005  
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# **INFORMATION DISCLOSURE STATEMENT**

(Use several sheets if necessary)

PTO Form 1449

## **U.S. PATENT DOCUMENTS**

Applicants: Patrick C. Kung et al.  
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## **FOREIGN PATENT DOCUMENTS**

**OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)**

Examiner:

**Date Considered:**

Examiner: Initial if reference considered, whether or not citation is in conformance with MPEP 609; draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.